



306.41102X00

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellants: H. KERN
Serial No.: 10/048,168
Filed: June 10, 2002
For: Entirely Combustible Inductive Primer
Group: 3644
Examiner: B. Hayes

REPLY BRIEF

Mail Stop: Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

August 23, 2004

Sir:

Appellant is filing this reply brief, in triplicate, under 37 CFR 1.193 in reply to the Examiner's Answer mailed June 21, 2004.

Initially, appellant wishes to correct a typographical error in the summary of the invention section of appellant's brief filed March 29, 2004. In the first full paragraph on page 3 of appellant's brief, fourth line from the bottom, "the post" should read --opposed--. Accordingly, the first full paragraph on page 3 of appellants brief should read as follows:

The primer of the present invention has an ignition element and a coil in which the energy required for triggering is transferred by electromagnetic means (inductively). In order to avoid the problems heretofore associated with unburned remains of the primer, applicant situates the ignition element and coil on a common, flat, support material, the entire support material

consisting of combustible or consumable materials, such as paper or nitro-cellulose. See, page 1, line 32 to page 2, line 5 of appellant's specification. The three-dimensional cylindrical coil is provided by providing conductive tracks 1 on the support material 5 (see Figure 1 and page 3, line 28 to page 4, line 4), rolling the support material 5 to form a cylinder (see Figure 2 and page 4, lines 6 - 12) and laying opposed conductor ends 6 of the coil one on top of the other and making a contact between them, with remaining ends 3 of printed circuit traces 1 forming connection surfaces of the ignition element 4 (see Figures 1 and 3 and page 4, lines 14 - 21 and page 3, lines 32 - 35).

Turning to the Examiner's arguments in the Examiner's Answer, the Examiner alleges in section (10).2 and (11) that "the method of forming the device is not germane to the issue of patentability of the device itself. Therefore, this limitation has not been given patentable weight." Appellants submit the method of forming the device is germane to the issue of the patentability of the device itself and that the Examiner has erred by not giving patentable weight to the method limitations.

The present claims define the structure of the pyrotechnic primer in part by the process steps by which it may be formed. The process steps set forth in the claim produce a certain structure. As such, the process steps must be considered, as noted in the Manual of Patent Examining Procedure (MPEP).

The structure implied by the process steps should be considered when assessing the patentability of product-by-process claims over the prior art, especially ... where the manufacturing process steps would be expected to impart distinctive structural characteristics to the final product. See, e.g., In re Garnero, 412 F.2d 276, 279, 162 USPQ 221, 223 (CCPA 1979) (holding "interbonded by interfusion" to limit structure of the claimed composite and noting that terms such as "welded," "intermixed,"

"ground in place," "press fitted," and "etched" are capable of construction as structural limitations.)

MPEP §2113

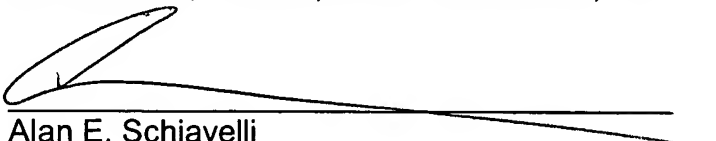
Here, the three-dimensional cylindrical coil is produced by providing conductive tracks on the support material, rolling the support material to form a cylinder, laying opposed conductor ends of the coil one on top of the other and making a contact between them. Clearly, these steps provide a different structure than the folded coil pack described in Brede et al. The folded coil pack of Brede et al clearly will not have opposed conductor ends of a coil one on top of another as in the rolled cylindrical coil of the present invention. Accordingly, the presently claimed invention is neither disclosed nor suggested by Brede et al.

For the reasons provided herein and the reasons provided in appellant's brief filed March 29, 2004, the final rejections should be reversed.

To the extent necessary, appellants petition for an extension of time under 37 CFR 1.136. Please charge any shortage in the fees due in connection with the filing of this paper, including extension of time fees, to the deposit account of Antonelli, Terry, Stout & Kraus, Deposit Account No. 01-2135 (Case: 306.41102X00), and please credit any excess fees to said deposit account.

Respectfully submitted,

ANTONELLI, TERRY, STOUT & KRAUS, LLP

A handwritten signature in dark ink, appearing to read 'Alan E. Schiavelli', is written over a horizontal line.

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